



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-BK17

Fisheries of the Northeastern United States; Amendment 23 to the Northeast Multispecies Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of availability of amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council has transmitted Amendment 23 to the Northeast Multispecies Fishery Management Plan, incorporating the Environmental Impact Statement and the Regulatory Flexibility Analysis, for review by the Secretary of Commerce, and is requesting comments from the public. This action would adjust the existing industry-funded at-sea monitoring program for groundfish sectors to improve the accuracy of collected catch data (landings and discards) and catch accounting in order to better determine total catch and effort and achieve coverage levels sufficient to minimize effects of potential monitoring bias. The measures recommended by the New England Fishery Management Council in Amendment 23 are intended to ensure there is a precise and accurate representation of catch to set catch limits at levels that prevent overfishing and to determine when catch limits are exceeded.

DATES: Comments must be received on or before *[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]*.

ADDRESSES: The New England Fishery Management Council (Council) has prepared an Environmental Impact Statement (EIS) for this action that describes the proposed

measures in Amendment 23 to the Northeast Multispecies Fishery Management Plan (FMP) and other considered alternatives and analyzes the impacts of the proposed measures and alternatives. The Council transmitted the amendment to NMFS, including the EIS, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and a Regulatory Impact Review (RIR). Copies of supporting documents used by the Council, including the EIS and RIR, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: <https://www.nefmc.org/library/amendment-23>.

You may submit comments, identified by NOAA-NMFS-2020-0144, by:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA-NMFS-2020-0144 in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Policy Analyst, (978) 281-9145.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council transmit any amendment it prepares to NMFS for review and

approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment and associated regulations deemed necessary by the Council to implement the amendment, immediately publish notification in the **Federal Register** that the amendment is available for public review and comment. The Council transmitted its final version of Amendment 23 to the Northeast Multispecies FMP (Amendment 23) to NMFS for review on August 9, 2021. On January 3, 2022, the Council submitted Amendment 23 proposed rule regulations they deemed to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Act.

The Council initiated Amendment 23 to consider changes to the Northeast multispecies (groundfish) monitoring and reporting system to ensure it is providing the accurate catch information necessary to manage the fishery effectively and efficiently. The alternatives considered in this action focus on measures that adjust the existing industry-funded sector monitoring program to better (1) determine effort and the total catch of target and regulated species; and (2) achieve monitoring coverage sufficient to minimize the effects of potential monitoring bias while maintaining flexibility to enhance fleet viability. To address these issues, the Council approved Amendment 23 that would:

- Replace the current process for calculating an annual monitoring coverage target with a fixed coverage target as a percentage of trips. The coverage target would be 100 percent of trips for 4 years, as long as Federal funding can support agency and industry costs;
- Set a baseline coverage target for when there is an absence of Federal funding to pay industry costs. The coverage target in that instance would default to 40 percent;
- Allow for increased coverage in subsequent years (years 5+) when Federal funding is available to support industry costs;

- Approve additional electronic monitoring (EM) technologies as an alternative to human at-sea monitors;
- Exclude from the human at-sea monitoring requirement all trips in geographic areas with low groundfish catch;
- Require periodic evaluation of the monitoring program and exclusions from the monitoring requirement;
- Allow for removal of the management uncertainty buffer from the portion of the acceptable biological catch (ABC) allocated to the sector catch share when the monitoring coverage target is 100 percent; and
- Grant authority to the Greater Atlantic Regional Administrator to revise sector reporting requirements to streamline reporting for the industry.

Background

The Northeast Multispecies FMP specifies the management measures for 13 groundfish species (cod, haddock, yellowtail flounder, pollock, plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, redfish, ocean pout, and Atlantic wolffish) off the New England and Mid-Atlantic coasts. The Northeast multispecies fishery occurs from Maine to North Carolina, although most fishing activity takes place north of New Jersey. The fishery has a recreational component and a commercial component. The commercial component is comprised of the common pool and the sector system. NMFS manages fishing by vessels in the common pool with a suite of effort controls, including limits to the number of days-at-sea that vessels may fish and possession limits for various species. The sector system is a voluntary catch share program where vessels form legal entities, called sectors. NMFS allocates each sector annual catch entitlements, subdivisions of annual catch limits (ACL), for most groundfish species. The annual catch entitlements are based on the collective catch history of the sector's members. NMFS also grants each sector exemptions from many effort controls

in exchange for the sector monitoring and managing the catch of all member vessels.

The Groundfish Sector System

Amendment 16 (75 FR 18261; April 9, 2010), which became effective on May 1, 2010, expanded the sector management program and adopted a process for setting ACLs for the groundfish fishery. Each sector must submit an operations plan and sector contract to the Regional Administrator, and must receive approval to operate for a fishing year. The sector contract binds all members to the sector and to each other for a fishing year. The sector operations plan, once approved by NMFS, is an enforceable set of requirements governing how the sector and its members operate, including administrative measures (*e.g.*, sector fees and membership rules) and fishing operations. The Council specified a number of operational requirements for sectors and require that sector operations plans explain how the sector will meet the requirements and operate. Sector operations plans and/or contracts must contain a number of elements. Required elements are codified at § 648.87(b)(2), and additional requirements are specified by NMFS in the Sector Operations Plan, Contract, and Environmental Assessment Requirements posted at: <https://bit.ly/3pdau1L>.

The Sector Monitoring Program

Amendment 16 also updated the requirements for sector and common pool monitoring programs, including requirements for industry-funded at-sea monitoring (ASM) and dockside monitoring (DSM). Amendment 16 required each sector to implement an industry-funded monitoring program as part of its approved operations plan. Each sector must monitor catch (landings and discards) by participating sector vessels to ensure that the sector does not exceed its allocated quotas during the fishing year. Each sector must determine all species landings by stock areas; apply discard estimates to landings; deduct catch from each quota allocated to the sector; and report the sector's catch on a weekly basis to NMFS. Sectors are required to pay for their

monitoring costs to the extent they are not covered by Federal funds. Sectors may use EM systems (*e.g.*, cameras and hydraulic sensors) in place of human at-sea monitors if NMFS has approved the EM method and technology. Currently, sectors can use the audit model EM method and technology, which we have described in more detail below.

Framework Adjustment 48 (78 FR 26117; May 3, 2013) specified the overall goals and objectives of the groundfish monitoring program and discontinued the DSM program. Framework 55 (81 FR 26411; May 2, 2016) clarified that the primary goal of the monitoring program is to verify area fished, catch, and discards by species and gear type; and should be done in the most cost effective means practicable. Framework 55 further clarified that all other goals and objectives of groundfish monitoring programs are equally weighted secondary goals. Additionally, Framework 55 modified the method used to set the coverage target for the industry-funded sector ASM program and excluded certain types of groundfish trips with low groundfish catch from the monitoring requirement. Amendment 23 would revise the monitoring program further to improve catch accounting and management of the groundfish sector program fishery.

Amendment 23 would require sectors to meet the coverage level for each year, as described below. The amendment includes an exemption for vessels that fish on trips that occur entirely west of 71° 30' W. longitude. This provision is intended to reduce the monitoring burden on vessels that fish in areas where groundfish catch is minimal.

Monitoring Coverage Target Calculation

Current regulations at § 648.87(b)(1)(v)(B)(I)(i) set forth an annual process for determining the target at-sea coverage rate for the sector monitoring program, which must be less than 100 percent. NMFS is required to determine an ASM coverage target that is sufficient to at least meet the coefficient of variation (CV) specified in the Standardized Bycatch Reporting Methodology at the overall stock level for each stock of regulated species and ocean pout, and to monitor sector operations, to the extent

practicable, in order to reliably estimate overall catch by sector vessels. Framework 55 revised the method used to calculate the coverage target necessary to meet the CV standard to make the program more cost effective and smooth the fluctuations in the annual coverage level to provide additional stability for the fishing industry. NMFS determines the coverage target for the upcoming fishing year based on the most recent 3-year average of the total required coverage level necessary to reach the required CV for each stock. For each stock, the coverage level needed to achieve the required CV is calculated first for each of the 3 years and then averaged. The coverage level that will apply is the maximum stock-specific level after considering several criteria. For a given fishing year, stocks that are not overfished, with overfishing not occurring according to the most recent available stock assessment, and that in the previous fishing year have less than 75 percent of the sector sub-ACL harvested and less than 10 percent of catch comprised of discards, are not used to set the coverage target. A stock must meet all of these criteria to be eliminated from use as the annual coverage target for a given year. This prescriptive methodology is used to calculate the ASM coverage target that would meet the CV standard, but NMFS must also ensure that the coverage target reliably estimates overall catch by sector vessels. Accordingly, NMFS considers factors beyond the coverage target that meets the CV standard and in recent years has set an ASM coverage target above the minimum to account for bias in the monitoring program.

Amendment 23 would replace the current process for calculating an annual monitoring coverage target with a fixed coverage target as a percentage of trips. The coverage target would be 100 percent of trips for 4 years, as long as Federal funding can pay for both agency and industry costs. The amendment would set a baseline coverage target for when there is an absence of Federal funding to pay industry's costs. In that instance, the coverage target would default to 40 percent. Amendment 23 would also allow for increased coverage in subsequent years, *i.e.*, for years 5 and beyond, when

Federal funding is available to pay for industry's costs.

Electronic Monitoring

Beginning in 2016, NMFS worked with members of industry and other stakeholders to develop EM as a tool to meet the sector monitoring requirements. In December 2019, NMFS notified the Council of its intent to expand EM and allow sectors to submit an EM plan as part of the fishing years 2021–2022 sector operations plan approval process. On March 31, 2021, NMFS announced its determination that the EM audit model is sufficient for use instead of ASM to meet sector monitoring and reporting requirements (86 FR 16687).

Amendment 23 would implement two EM programs that sector vessels could use to satisfy the sector monitoring requirement. Amendment 23 does not remove or alter the existing authority for the Regional Administrator to deem types of EM technology sufficient to be used in place of human at-sea monitors. However, the two EM models in Amendment 23 would be available for sectors to include in their operations plans without requiring a separate determination by the Regional Administrator. The audit model, as described in the rule announcing its approval, is one of the EM models included in Amendment 23 (86 FR 16687; March 31, 2021). Amendment 23 would also allow the maximized retention EM model (MREM).

Under the MREM model, on all sector EM trips, the vessel operator and crew are required to retain and land all catch of allocated groundfish, including fish below the minimum size that they would otherwise be required to discard. Unallocated groundfish and non-groundfish species must be handled in accordance with standard commercial fishing operations. Any allowable discards must occur at designated discard control points on the vessel, described in the vessel-specific monitoring plan. EM data from the trip would be reviewed by the EM service provider to verify that the vessel operator and crew complied with the catch retention requirements. A human dockside monitor would

meet the vessel at port upon its return from each trip to observe the offload and collect information on the catch. Landings of all fish, including fish below the minimum size in the regulations, are reported to NMFS by the dealer.

Sector Reporting Requirements

Amendment 16 established sector monitoring requirements, codified at § 648.87(b)(1)(v), and sector reporting requirements, codified at § 648.87(b)(1)(vi). Each sector must submit weekly reports to NMFS. When a sector has caught 90 percent of any quota, that sector must submit daily catch reports. Each sector must also submit an annual report that summarizes the fishing activities of participating vessels. In addition to the reporting requirements applicable to all commercial groundfish vessels, sector vessels must submit additional information through their vessel monitoring systems.

At the time the reporting requirements were developed for Amendment 16, sectors were expected to use real-time information from their vessels to monitor catch. In practice, NMFS provides sector managers with a weekly download of official trip data (dealer and vessel trip report landings data, observer discard data, and calculated discard rates for unobserved trips), which most sectors use to update their sector accounting and then submit a weekly report to NMFS. Some sectors use data collected directly from vessels in their reports. Data reconciliation occurs regularly between the sectors and NMFS to improve monitoring accuracy by identifying and resolving any data errors in either the sector's or NMFS' information.

Amendment 23 would authorize the Regional Administrator to modify the sector monitoring requirements at § 648.87(b)(1)(v) and the sector reporting requirements at § 648.87(b)(1)(vi) to streamline the sector reporting process. More efficient methods might be developed that would still involve timely monitoring and reconciliation of data sources between sectors and NMFS. For example, NMFS could eliminate the requirement for sectors to submit weekly and daily reports and instead the agency would provide

monitoring summaries for the sectors to use for catch accounting and managing annual catch entitlements, while continuing the process where NMFS and sectors reconcile catch data to confirm accuracy. Authorizing the Regional Administrator to streamline the sector reporting process could help to reduce reporting redundancies, provide flexibility to sectors and sector managers, and improve timeliness of data processing.

Management Uncertainty Buffer

In 2010, Amendment 16 implemented new requirements of the Magnuson-Stevens Act, including ACLs and accountability measures. Amendment 16 included a process for setting an overfishing limit (OFL) for groundfish stocks. The OFL represents the maximum amount of fish that can be caught in a year without resulting in overfishing. The Council typically recommends an ABC for a groundfish stock that is lower than the OFL to account for scientific uncertainty. The Council sets an ACL at a level below the ABC to account for management uncertainty, and this serves as a buffer to prevent the fishery from exceeding the ABC. The management uncertainty buffer accounts for the possibility that management measures will result in a level of catch greater than expected. The current process for evaluating management uncertainty buffers includes consideration of the following elements: (1) Enforceability of management measures; (2) monitoring adequacy (including timeliness, completeness, and accuracy of monitoring data); (3) precision; (4) latent effort; and (5) other fishery catch.

The Council evaluates the management uncertainty buffers in each specification setting action. The current default adjustment for management uncertainty for groundfish stocks is 5 percent of the ABC. For stocks with less management uncertainty, the buffer is set at 3 percent of the ABC; for stocks with more uncertainty, the buffer is set at 7 percent of the ABC. Stocks not caught in state waters have a lower management uncertainty buffer of 3 percent of the ABC; zero possession, discard-only stocks have a higher management uncertainty buffer of 7 percent of the ABC.

Amendment 23 would remove the management uncertainty buffer from the portion of the ABC allocated to the sector catch share when the monitoring coverage target is 100 percent. The revised management uncertainty buffers would apply only to sectors, and not to the common pool component of the fishery, or other sub-ACLs or sub-components for any stocks. After NMFS determines the coverage target for a fishing year, NMFS will remove the management uncertainty buffer from the sector allocation in any year the coverage target is 100 percent. If Federal funds are not available for 100 percent coverage and a lower target coverage level is set, the management uncertainty buffers would be in place for that fishing year, subject to the Council's review as part of each specification action.

The Magnuson-Stevens Act allows us to approve, partially approve, or disapprove measures recommended by the Council in an amendment based on whether the measures are consistent with the FMP, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. The Council develops policy recommendations for its fisheries and NMFS review and approves the recommendations after considering consistency the Magnuson-Steven Act and other applicable law. As such, we are seeking comment on whether the measures in Amendment 23 are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law, including whether the Amendment's measures will achieve its goals and objectives. Through this notice, NMFS seeks comments on Amendment 23 and its incorporated documents through the end of the comment period stated in the **DATES** section of this notice of availability (NOA). Following the publication of this NOA, a rule proposing the implementation of measures in this amendment is anticipated to be published in the **Federal Register** for public comment. Public comments must be received by the end of the comment period provided in this NOA of Amendment 23 to be considered in the approval/disapproval decision. All comments received by the end of

the comment period on the NOA, whether specifically directed to the NOA or the proposed rule, will be considered in the approval/disapproval decision. Comments received after the end of the comment period for the NOA will not be considered in the approval/disapproval decision of Amendment 23.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 11, 2022.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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